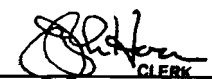


FILED

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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

NICOLE JORGENSEN,

CIV. NO. 10-4019

Plaintiff,

vs.

COMPLAINT

**DR. JOY C. SABINASH-MILLER and
WATERTOWN WELLNESS &
CHIROPRACTIC CENTER, LLC**

Defendants.

The Plaintiff, Nicole Jorgenson, for her Complaint against the Defendants, states and alleges as follows:

PARTIES

1.

The Plaintiff, Nicole Jorgenson, is a citizen of Ward County, North Dakota.

2.

Upon information and belief, Defendant, Dr. Joy Sabinash-Miller ("Dr. Sabinash-Miller"), is a chiropractor licensed to practice chiropractic medicine in the State of South Dakota, and regularly engages in the practice of chiropractic medicine in Watertown, Codington County, South Dakota.

3.

The Defendant, Watertown Wellness & Chiropractic Center, LLC ("WWCC") is a South Dakota limited liability company with its principal place of business in Watertown, Codington County, South Dakota engaged in the practice of chiropractic medicine in the State of South Dakota by and through Dr. Sabinash-Miller. Upon information and belief Dr. Sabinash-Miller is the sole member of WWCC.

JURISDICTION AND VENUE

4.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332 as complete diversity exists between the parties as the Plaintiff is a resident of the State of North Dakota and the Defendants are residents of the State of South Dakota.

5.

The amount in controversy is in excess of \$75,000.00.

6.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events giving rise to this claim occurred in this district.

GENERAL ALLEGATIONS

7.

On May 29, 2009, Dr. Sabinash-Miller provided chiropractic services to Plaintiff in

the form of acupuncture.

8.

During the Plaintiff's treatment on May 29, 2009, Dr. Sabinash-Miller was providing chiropractic services to Plaintiff as an agent of WWCC, and was providing chiropractic services to the Plaintiff within the scope of that agency relationship.

9.

Dr. Sabinash-Miller did not disclose to the Plaintiff that she was going to perform acupuncture treatment and did not provide her with any information as to the risks of the procedure.

10.

At no time did Plaintiff consent to Dr. Sabinash-Miller performing the acupuncture treatment.

11.

During the acupuncture treatment on May 29, 2009, Dr. Sabinash-Miller punctured Plaintiff's right lung causing it to collapse, which resulted in Plaintiff undergoing surgery and hospitalization to treat the collapsed lung.

12

Plaintiff sustained severe personal injury, conscious pain and suffering and economic loss as a result of Dr. Sabinash-Miller's May 29, 2009 acupuncture treatment.

COUNT ONE (BATTERY)

13.

Plaintiff hereby incorporates by reference all proceeding paragraphs as if fully set forth herein.

14.

Dr. Sabinash-Miller intended to cause and did cause a harmful contact with defendant's person when she performed acupuncture treatment on the Plaintiff.

15.

Dr. Sabinash-Miller did not disclose to the Plaintiff that she was going to perform acupuncture treatment, and at no time did Plaintiff consent to Dr. Sabinash-Miller performing acupuncture treatment.

16.

As a direct and proximate result of Dr. Sabinash-Miller's conduct, Plaintiff suffered damages, including but not limited to, serious injury to her lung, medical expenses, lost wages, additional economic loss, pain and suffering, and loss of enjoyment of life.

COUNT TWO (PROFESSIONAL MALPRACTICE)

17.

Plaintiff hereby incorporates by reference all proceeding paragraphs as if fully set forth herein.

18.

Dr. Sabinash-Miller owed a duty to Plaintiff to exercise reasonable care and skill in providing professional chiropractic services to her while a patient under her care on September 29, 2009.

19.

Dr. Sabinash-Miller breached the applicable standard of care when she punctured the Plaintiff's right lung causing serious physical injury and conscious pain and suffering to the Plaintiff.

20.

As a direct and proximate result of Dr. Sabinash-Miller's conduct, Plaintiff suffered damages, including, but not limited to, serious injury to her lung, medical expenses, lost wages, additional economic loss, pain and suffering, and loss of enjoyment of life.

**COUNT THREE
(NEGLIGENCE- PROFESSIONAL MALPRACTICE via AGENCY)**

21.

Plaintiff hereby incorporates by reference all proceeding paragraphs as if fully set forth herein.

22.

At the time the of the acupuncture treatment performed on the Plaintiff on May 29, 2009 by Dr. Sabinash-Miller, Dr. Sabinash-Miller was acting within the scope of her employment and agency with Defendant WWCC.

**COUNT FOUR
(PUNITIVE DAMAGES)**

23.

Plaintiff hereby incorporates by reference all proceeding paragraphs as if fully set forth herein.

24.

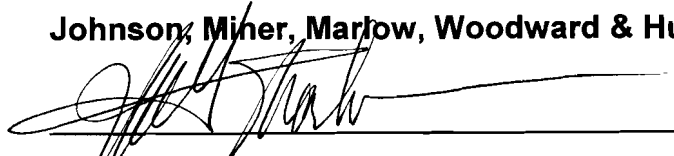
Dr. Sabinash-Miller's treatment of the Plaintiff as previously set forth demonstrates a disregard for the rights of others and thus gives rise to punitive damages under SDCL 21-3-2.

WHEREFORE, Plaintiff respectfully prays for damages against Defendants as follows:

- (1) For Plaintiff's compensatory, general and special damages in an amount in excess of \$75,000.00 deemed just and proper under the circumstances;
- (2) For Punitive damages in an amount to be determined at trial;
- (3) For prejudgment and post-judgment interest if provided for by law; and
- (4) For such further relief as the Court determines just and proper.

Dated this 8th day of March, 2010.

Johnson, Miner, Marlow, Woodward & Huff, Prof. LLC



Michael F. Marlow
Lindsay J. Hovden
200 W. 3rd St.
PO Box 667
Yankton, SD 57078
Telephone: (605)665-5009
Facsimile: (605)665-4788

Attorneys for the Plaintiff